

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to allow Trackman J. E. Ingram holiday pay for July 4, 1984 (System Docket CR-1210).

(2) Trackman J. E. Ingram shall be allowed eight (8) hours of pay at his straight time rate because of the violation referred to in Part (1) above."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was recalled from furlough on July 3, 1984, to perform Trackman's duties in the vicinity of Lewistown, Pennsylvania. According to the Carrier, these duties consisted of serving as watchman for telephone company employees who were laying or burrowing fiberoptic cable along Carrier's right of way. Claimant worked, and was compensated for July 3, July 4 (holiday) and July 5, 1984. Effective July 9, 1984, Claimant was awarded a position as Trackman in AFE Gang, Camp Cars, Huntington, Pennsylvania.

The parties agree that the sole issue here is whether Claimant was, in fact, "regularly assigned" on the days worked immediately preceding and following the holiday within the meaning of that term under the holiday pay provisions of the Agreement. The Organization contends that Carrier recalled Claimant from service and assigned him to a newly created trackman position on July 3, 4, 5 and then subsequently bulletined and awarded the position to Claimant on July 9, 1984. This is not a case where Claimant was filling a temporary vacancy caused by illness or vacation, the Organization insists. Instead, when Carrier assigned Claimant the position, he was entitled to hold

said position until he was displaced or until the position was abolished in accordance with Agreement rules. Under these circumstances, the Organization argues that Claimant was a regularly assigned employee within the meaning of Rule 14.

Carrier contends that the term "regularly assigned employee" as used in Rule 14 has always been understood to mean an employee who owns an advertised position. Claimant's job, by contrast, was of short duration, temporary, and was in fact not even for the direct benefit of the Carrier, but rather for the benefit of the telephone company employees to protect them from any traffic moving on the track. Carrier also stresses, contrary to the Organization's position, that Claimant was not assigned to a bulletined position pending award and that the trackman position awarded Claimant on July 9, 1984 was not the same position to which Claimant had been recalled from furlough on July 3, 1984. Therefore, the Organization's attempt to characterize Claimant's assignment as a continuing one is erroneous and requires that the claim be denied.

The Board has carefully reviewed the precedent awards and arguments of the parties. Based on that review, we conclude that Carrier is not correct when it asserts that the term "regularly assigned employee" means an employee who owns an advertised position, having obtained his position either through bidding or displacement rights. The better reasoned awards within this Division have taken a broader view, concluding that employees assigned to and identified with a specific position for indefinite duration fall within the meaning of a "regularly assigned employee" even though the position they occupy is not bulletined.

The difficulty with the Organization's position, however, is that the instant case does not fall even within the broader meaning attributed to "regularly assigned employees" in the precedent awards cited. Claimant here was assigned to an extra job of three days' duration. In contrast to Third Division Awards 14325 and 15894, for example, where employees had worked on unbulletined assignments of indefinite duration for over a year, Claimant's assignment was of a limited and temporary nature. Moreover, Claimant does not come within the purview of the underlying purpose of the Paid Holiday provision, as explained in Third Division Award 7432:

****The key to the interpretation of the meaning of the phrase 'regularly assigned' in Article II, Section 1, is not necessarily found in the method of assignment or in the detailed analysis of Agreement rules wherein the words are used in various connections. As stated in the awards cited and in Second Division Awards 2052 and 2169, the purpose of the rule was to assure employees who had a normal and dependable take-home pay that it would be maintained in weeks during which a holiday occurs. Each case wherein it is claimed that an employee is 'regularly assigned' so as to come within the

application of this standard, rather than by rules as to methods of assignment, workweek or extra employees and other rules which use similar language in dealing with subjects other than the special subject of holiday pay. This is not to say that such rules may not be helpful in deciding specific cases; but they must always be considered in conjunction with the underlying intent of the National Agreement."

As the foregoing Award illustrates, the purpose of the Paid Holiday provision was to ensure that employees who had normal and dependable take-home pay would maintain that regularity in weeks during which a holiday occurs. That is the underlying rationale in the awards which have addressed this issue. Claimant in this case had no normal or dependable take-home pay. At the time he was recalled from furlough, all he could expect was a few days' work and a few days' pay. The fact that he was subsequently awarded a position as Trackman does not, in our view, alter the Claimant's temporary status on the dates in question. Accordingly, we conclude that he was not a "regularly assigned employee" within the meaning of Rule 14 and therefore was not entitled to holiday pay for July 4, 1984.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.